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ESSAY

UNIVERSAL SUBORDINATION TO THE RULE OF LAW AS A PRECONDITION FOR THE CONCEPTUAL POSSIBILITY OF INTERNATIONAL LAW AND THE CASE FOR DEMOCRATIZING THE UNITED NATIONS

*Jarvis J. Lagman**

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The right to individual self-determination is a fundamental human right recognized under international law and codified under Article 21 of the Universal Declaration of Human Rights, which was adopted by the General Assembly of the United Nations in 1948.¹ However, the principle of the sovereign equality of nations gives rise to the presumption of the supremacy of national governments to enforce law within their own political domains and gives such national governments the sole right to determine, in their unmitigated discretion, the structure of their own

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1. See Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 at 75 (Dec. 12, 1948) (codifying the right of self-determination as a human right).

national political affairs.² The conflict in these countervailing policies is problematic, especially in the context of achieving world peace, because, given that international law forms the basis of agreement as to the resolution of disputes between countries, political leaders in countries whose political legitimacy is derived from non-legal, non-democratic sources of political authority are individually vested with sovereign authority without institutional accountability, meaning that such political leaders are not subordinate to the rule of law and are immune from judicial process.³

At minimum, the conceptual possibility of international law requires the subordination of all people, including political leaders, to the rule of law because “[i]n a rule-of-law state, no one is excluded from the jurisdiction of law, [t]here are no officials who are above the law, and no citizens outside the law.”⁴ In the absence of universal subordination to the rule of law, international law is rendered illusory since political leaders who are individually vested with sovereign authority, and who, as a result, are not subordinate to the rule of law, cannot be legally and irrevocably bound by the laws of contract, most notably with regard to compulsory adherence to treaties and other international agreements. Such political leaders retain the sovereign power to violate international law without legal recourse; both within their own political domains, through sovereign immunity, and outside of their political domains,

2. See Hans Kelsen, *The Principle of Sovereign Equality of States as a Basis for International Organization*, 53 YALE L.J. 207, 212 (1944) (defining the sovereign equality of nations principle as containing the condition that that “no state can be bound without or against its will”).

3. See Kelsen, *supra* note 2, at 212 (in citing the manner in which supreme authority over the affairs of a non-democratic country is vested in its sovereign leader, “the power of [the] king could not be restricted because it was by its very nature ‘sovereign,’ and because sovereignty mean[s] ‘the absolute and perpetual power within a State’”); see also Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935, 1940–41 (2002) (providing support for the proposition that international law forms the basis of agreement between nations regarding the resolution of disputes because “treaties are instrumental in that they create law that binds ratifying countries, with the goal of modifying nations’ practices in particular ways”).

4. See Terry Nardin, *Theorizing the International Rule of Law*, 34 REV. INT’L STUD. 385, 386–95 (2008). Nardin observes that for “international law [to be] conceptually possible,” “the presuppositions of law conforming to the formal criteria of the rule of law [must] be met at the international level.” *Id.* at 386. “The standard criteria of the rule of law [is] that there can be no secret or retroactive laws, no crimes except as provided by law, no penalties except those linked to a specific offence, no arbitrary exemptions from law.” *Id.* at 395. “It is important to notice that these rule-of-law criteria are not themselves the outcome of an authoritative decision,” “they cannot be altered or annulled by authority.” *Id.* “In a rule-of-law state, no one is excluded from the jurisdiction of law. There are no officials who are above the law, and no citizens outside the law.” *Id.* Therefore, the conceptual possibility of international law is conditioned upon international conformation to the formal criteria of the rule of law, which, at minimum, requires the subordination of all people, including political leaders, to the rule of law.

through the sovereign equality of nations principle.⁵

Thus, for international law to be uniformly effective, the essential conflict between the sovereign equality of nations principle, as represented by the vesting of sovereign authority in the persona of individual non-democratically elected political leaders, and the fundamental right to individual self-determination, as expressed through the equal right to take part in democratic elections and the hegemonic recognition of the universal primacy of the rule of law, must be resolved in a manner that harmonizes political systems to adopt democracy and the universal subordination to the rule of law in the ordering of their political affairs, but does so without violating the sovereign equality of nations principle.

The basis of the case for democratizing the United Nations is that transnational elections would operate as an instrument for democratic cultural diffusion through which political systems throughout the world would be harmonized, in the long-run, to adopt democracy and the rule of law as the basis of the authority of government. Because transnational elections to allocate power within the United Nations would not directly change the composition of domestic national governments, the introduction of democratic norms and political practices into non-democratic countries through the democratization of the United Nations would enable the worldwide diffusion of democratic culture in a manner that would not overtly threaten the sovereign power of existing political leaders nor violate the sovereign equality of nations principle (assuming that achievements in diplomacy would ultimately enable transnational elections to materialize with the unanimous consent of the global community).

This Article is intended to provide a policy framework for encouraging the harmonization of all political systems in the world to adopt the rule of law and democratic principles as the basis for the authority of government. Harmonization in this manner is imperative for two primary reasons: (1) universal subordination to the rule of law is a precondition for the conceptual possibility of international law; and (2) the right to self-determination is a fundamental human right whose suppression is in direct violation of well-established international norms,

5. *See id.*; *see also* Kelsen, *supra* note 2, at 212. Political systems that conform to the rule of law view “law itself as the basis of a relationship among moral equals, and not solely an instrument of someone’s purposes.” *See* Nardin, *supra* note 4, at 395. In contrast, political systems whose political leaders are vested with sovereign authority are deemed to be morally superior in their relations with others because they cannot be restricted within their own political domains. *See* Kelsen, *supra* note 2, at 212. Ergo, the conceptual possibility of international law requires universal subordination to the rule of law by all persons, including political leaders, in order to maintain the integrity of law as the “basis of a relationship among moral equals” and “not [as] an instrument of someone’s purposes.”

specifically the Universal Declaration of Human Rights.⁶ Through the staging of transnational democratic elections in non-democratic countries, the democratization of the United Nations would catalyze the harmonization of political systems to adopt the rule of law and democratic principles as the basis for the authority of government by utilizing the mechanics of cultural diffusion to install democratic institutional infrastructure in non-democratic countries and expose such non-democratic societies to the rituals of democratic political culture.⁷ In the long-run and without directly displacing existing political hegemonies in violation of the sovereign equality of nations principle, cultural diffusion through the democratization of the United Nations would facilitate the harmonization of political systems in a controlled and peaceful manner, as compared to achieving harmonization through coercive mechanisms, such as the use of extra-national military force.⁸ Once harmonization is achieved, the conceptual framework for the conduct of international law would be strengthened and the right to self-determination, as based in international law and unencumbered by potential conflict with the arbitrary fiats of individual political leaders who are not subordinate to the rule of law, could be applied in a manner that institutionalizes the formal equality of political opportunity on a global scale and democratizes global policy outcomes.⁹

I. GLOBAL DEMOCRACY, THE FORMAL EQUALITY OF POLITICAL OPPORTUNITY AND THE SIGNIFICANCE OF THE CONCEPTUAL POSSIBILITY OF INTERNATIONAL LAW

The idea of democratizing the United Nations is not new.¹⁰ The notion

6. See Nardin, *supra* note 4, at 386; see also Universal Declaration of Human Rights, *supra* note 1, at 75.

7. See David Strang & John W. Meyer, *Institutional Conditions For Diffusion*, 22 THEORY & SOC'Y 487, 492 (1993) (noting that through the use of cultural diffusion, transnational governmental organizations, such as the United Nations, are "specifically designed to promote the homogenization of their members around models of progressive policy").

8. See Charles R. Shipan & Craig Volden, *The Mechanisms of Policy Diffusion*, 52 AM. J. POL. SCI. 840, 841 (2008) (explaining the mechanisms of policy diffusion generally); see also Beth A. Simmons et al., *The International Diffusion of Liberalism*, 60 INT'L ORG. 781, 795-99 (2006) (explaining the mechanisms of policy diffusion as applied internationally).

9. See Andrew Strauss, *International Law as Democratic Law*, 103 AM. SOC'Y INT'L L. 388 (2009) (asserting that applying the democratic ideal of granting the theoretically equal opportunity to influence political outcomes to the determination of global policy would yield positive outcomes); see also Richard Falk & Andrew Strauss, *Toward Global Parliament*, 80 FOREIGN AFF. 212, 212 (2001) (providing a case for establishing a global parliament based on the need for greater citizen participation in the international order and in the determination of global policy).

10. See Bill McCarthy, *Democracy in the United Nations*, 42 U.N. CHRON. 34, 34-35

of establishing a global parliamentary assembly directly elected by the people was proposed as a part of the League of Nations.¹¹ Traditionally, arguments in favor of the establishment of a global parliament have centered on the need for greater citizen participation in the international order, as issues of global policy that directly affect people around the world are being shaped by unelected actors within the international system.¹²

At the core of this argument is the idea that in a modern representative democracy, equality is institutionalized in the granting of every citizen a theoretically equal opportunity to influence political outcomes.¹³ The ultimate arbiters of governmental policy are representatives selected by citizens who each have an equal vote, or say, in that selection.¹⁴ After this selection, citizens continue to influence representatives by way of interest groups, which all citizens have a formally equal opportunity to participate in forming.¹⁵

While this formal equality of opportunity to influence political outcomes is, for a variety of reasons, only imperfectly realized in even the most successful democracies, successful democracies are nevertheless structured to approximate this ideal because the formal equality of opportunity to participate in the political process is the governing principle that forms the basis of political authority in such democratic societies.¹⁶ Therefore, by applying the democratic ideal to structure the allocation of political power in the transnational governmental institutions responsible for determining issues of global policy, every citizen in the world could have a theoretically equal opportunity to influence political outcomes with regard to global policy.¹⁷ Under such a system of democratic global governance, the political authority to determine issues of global policy would be derived from the consent of the governed in the same manner as in democratic national governments.¹⁸

While achieving formal equality of political opportunity within the international system is the ideal, this ideal is not achievable for as long as there are countries in the world that are non-democratic and derive political legitimacy from non-legal sources of political authority because the absence of universal subordination to the rule of law renders

(2005) (providing an overview of the movement to establish a U.N. Parliamentary Assembly whose representatives are directly elected by a global electorate).

11. *Id.*

12. *See* Falk & Strauss, *supra* note 9, at 212.

13. *See* Strauss, *supra* note 9, at 388.

14. *Id.*

15. *Id.*

16. *Id.*

17. *See id.* at 389.

18. *Id.* at 390.

international law as illusory with regard to such countries.¹⁹ Democracy requires that people be treated equally insofar as they are autonomous agents participating in the process of self-government.²⁰ However, in non-democratic countries that vest the absolute and perpetual power of the state in the persona of their individual sovereign political leaders, their sovereign leaders are, by definition, legally unequal with all other people within their societies because the power of such sovereign leaders are unrestricted to a degree that is not legally attainable by any others.²¹ This fundamental inequality in the allocation of political power within such individual non-democratic societies renders formal equality of political opportunity within the international system legally impossible because, in those certain circumstances where duly authorized international law and the prerogatives of individual sovereign political leaders of national governments conflict, the sovereign equality of nations principle gives rise to the presumption of supremacy of the right of sovereign national governments to override international law within their own political domains, thereby rendering the conceptual possibility of international law an illusory construction.²²

The significance of upholding the integrity of the conceptual possibility of international law is to avoid uncertainty in the event that there is a conflict in law. Specifically, the conflict in law between the sovereign equality of nations principle and the fundamental right to individual self-determination creates uncertainty because there is no prescribed procedure for determining supremacy in the event that these core tenets of international law conflict. Further, to the extent that a procedure for resolving such conflicts in international law is prescribed, universal subordination to the rule of law is necessary in order for such prescribed methods to be enforceable against all relevant parties. Therefore, substantive and sustainable change to global policy cannot be achieved until all of the political systems of the world are harmonized to adopt democracy and the rule of law as the basis of the authority of government because the conceptual possibility of international law is

19. See Hathaway, *supra* note 3, at 1940–41; see also Nardin, *supra* note 4, at 386, 395; Kelsen, *supra* note 2, at 212; Max Weber, *The Three Types of Legitimate Rule*, 4 BERKELEY PUBL'N IN SOC'Y & INST. 1, 1–11 (1958).

20. Robert Post, *Democracy and Equality*, 603 ANNALS AM. ACAD. POL. & SOC. SCI. 24, 28 (2006) (in support of the proposition that formal political equality amongst individual people is a pre-requisite for democracy, it is noted that “[d]emocracy requires that persons be treated equally insofar as they are autonomous participants in the process of self-government. This form of equality is foundational to democracy, because it follows from the very definition of democracy”).

21. See Nardin, *supra* note 4, at 395; see also Kelsen, *supra* note 2, at 212; Weber, *supra* note 19, at 1–11.

22. See Nardin, *supra* note 4, at 395; see also Kelsen, *supra* note 2, at 212; Weber, *supra* note 19, at 1–11.

predicated upon universal subordination to the rule of law.²³

II. SELF-DETERMINATION AS A FUNDAMENTAL RIGHT AND THE USE OF THE DEMOCRATIZATION OF TRANSNATIONAL INSTITUTIONS AS A MECHANISM OF CULTURAL DIFFUSION

John Locke, an influential political scientist, theorized that government is not legitimate unless it is carried on with the consent of the governed.²⁴ The right to self-determination is a fundamental human right that is codified under Article 21 of the Universal Declaration of Human Rights.²⁵ The right to self-determination, along with the balance of the provisions of the Universal Declaration of Human Rights, is well-established as a part of the canon of international law.²⁶ Article 21 of the Universal Declaration of Human Rights provides the following:

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives;

(2) Everyone has the right of equal access to public service in his country; and

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.²⁷

The right of self-determination “expressed in periodic and genuine elections,” as well as the right that “the will of the people shall be the basis of the authority of government,” create a mandate in support of the diffusion of democratic cultural practices into non-democratic societies.²⁸

23. See Nardin, *supra* note 4, at 395; see also Kelsen, *supra* note 2, at 212; Weber, *supra* note 19, at 1–11.

24. See generally John Dunn, *Consent in the Political Theory of John Locke*, 10 *HIST. J.* 153 (1967) (quoting John Locke and discussing the role of consent in the legitimacy of government); C.W. Cassinelli, *The “Consent” of the Governed*, 12 *W. POL. Q.* 391 (1959) (also quoting John Locke and discussing the role of consent in the legitimacy of government).

25. See Universal Declaration of Human Rights, *supra* note 1, at 75.

26. See United Nations, *Universal Declaration of Human Rights*, in U.N. BRIEFING PAPERS: HUMAN RIGHTS TODAY (1998) [hereinafter U.N. BRIEFING PAPERS] (discussing the history of the Universal Declaration of Human Rights and its establishment as international law).

27. Universal Declaration of Human Rights, *supra* note 1, at 75.

28. *Id.*; see also U.N. BRIEFING PAPERS, *supra* note 26. The right to self-determination, as articulated in Article 21 of the Universal Declaration of Human Rights, is a norm that is widely supported in the international community and serves as the basis for encouraging the diffusion of democratic culture into non-democratic countries because of its status as a fundamental human

However, in light of the countervailing imperative to respect the sovereign equality of nations, defined as the principle that “no [nation] can be bound without or against its will,” non-democratic countries cannot be coerced, using extra-national military force or otherwise, to adopt democratic cultural practices in the structuring of their domestic political affairs without their consent.²⁹

Given that the right to self-determination may conflict with the sovereign equality of nations principle with respect to the manner in which non-democratic societies order their political arrangements, resolution of this conflict necessitates an alternative, non-violent means of institutionalizing democratic political practices in non-democratic societies that does not breach the sovereignty of non-democratic countries.³⁰

Renowned legal scholar Richard Dworkin once wrote that “in the event that fundamental principles of law conflict, there is the imperative to arrive at a resolution that coheres with existing legal principles in a manner that achieves the most morally attractive standard.” Given that the fundamental right to self-determination conflicts with the sovereign equality of nations principle with respect to how non-democratic societies order their political arrangements, the optimal resolution of this conflict requires a non-coercive method of institutionalizing democratic political practices in non-democratic countries that enables the construction of democratic infrastructure in such non-democratic countries without impinging upon their sovereignty. Since transnational organizations, such as the United Nations, are “designed specifically to promote the homogenization of their members around models of progressive policy,” democratizing how power is allocated within transnational governmental entities to stage democratic elections in non-democratic countries would catalyze, in the long-run, the harmonization of all political systems in the world to recognize democracy and the rule of law as the universal source

right applicable to all people, regardless of political affiliation.

29. See Kelsen, *supra* note 2, at 212.

30. See generally Ronald Dworkin, “*Natural” Law Revisited*, 34 FLA. L. REV. 171, (1982) (stating that in the event that fundamental principles of law conflict, there is the imperative to arrive at a resolution that coheres with existing legal principles in a manner that achieves the most morally attractive standard); see also Universal Declaration of Human Rights, *supra* note 1, at 75; Kelsen, *supra* note 2, at 212. Although the fundamental right to self-determination may conflict with the sovereign equality of nations principle, if non-democratic countries refuse to consent to the adoption of democracy as the basis of the authority of their governments, the injustice that arises from the violation of the right to self-determination is comparable to the injustice that arises from the violation of the sovereign equality of nations principle. In such situations where no resolution to this conflict is possible, then the dispositive question is whether the enforcement of principles of comity or the enforcement of human rights achieves the most morally attractive standard. However, the framework proposed herein endeavors to provide a solution that makes the dispositive balancing of such values unnecessary.

of political authority by utilizing the mechanics of cultural diffusion in a manner that is specifically calibrated to leverage the homogenizing power of such transnational organizations to facilitate the transition from non-democratic governance to democratic governance without violating the sovereign equality of nations principle.³¹

The idea that cultural diffusion can function as a transformation agent is well established.³² Generally diffusion is the process by which an innovation is communicated through channels over time among the members of a social system and subsequently causes changes in the structure and function of that social system.³³ Given that inadequate communication channels inhibit the function of cultural diffusion as a transformation agent,³⁴ the democratization of how political power is allocated within transnational governmental entities to stage democratic elections and build democratic infrastructure in non-democratic countries would function to create new channels through which democratic cultural practices could be communicated to people in non-democratic countries for the purpose of catalyzing the harmonization of all political systems in the world to recognize democracy and the rule of law as the universal source of political authority.³⁵

Specifically, by democratizing leadership positions within transnational governmental organizations to hold elections in non-democratic societies, the ritualized practice of periodically holding such elections would serve as a channel through which democratic culture could be diffused into non-democratic societies.³⁶ For example, although such elections would have no direct impact on the composition of the political hegemony, the staging of transnational democratic elections within non-democratic countries would provide such countries with a model for conducting democratic elections that governments in such

31. See Strang & Meyer, *supra* note 7, at 492–93.

32. See EVERETT M. ROGERS, *DIFFUSION OF INNOVATIONS* 5 (5th ed. 2003) (explaining the mechanics of cultural diffusion).

33. See *id.* at 6. Based on the Innovation-Decision Process Model first formulated by Rogers, the diffusion of an innovation so that it ultimately transforms the hegemonic practices of a social system involves a five-step process: (1) *Knowledge*: individuals within a social system first become exposed to the existence of an innovation and gain an understanding of how it functions; (2) *Persuasion*: individuals within a social system form a favorable or unfavorable attitude toward the innovation; (3) *Decision*: individuals within a social system engage in activities that lead to a choice to adopt or reject the innovation; (4) *Implementation*: individuals within a social system adopt the innovation on a probationary basis to determine its usefulness and suitability; and (5) *Confirmation*: individuals within a social system seek reinforcement of an innovation-decision already made and decide whether to continue to use the innovation on a continual basis or reject the innovation on the basis of new unfavorable information. See *id.* at 169.

34. See *id.*

35. Shipan & Volden, *supra* note 8, at 841.

36. See *id.* at 843–44; see also Simmons et al., *supra* note 8, at 799–801.

countries can “learn” from or “emulate.”³⁷ Further, assuming that the logistical infrastructure necessary to hold democratic elections, such as the establishment of voting precincts, the creation of voting rolls, the acquisition of voting equipment, would already have been institutionalized because of the a priori staging of transnational democratic elections, the transition from non-democratic to democratic governance would be primed for implementation because the infrastructure needed to enable the operation of governments whose authority are based on democratic principles under the rule of law would already have been established. Thus, as considered in the long-run, the diffusion of democratic political norms and practices into non-democratic societies through cultural diffusion enabled by the democratization of transnational governmental organization, coupled with prospective increases in the influence of interest groups within non-democratic countries advocating for the adoption of democratic reforms, would effect a harmonization of political systems to adopt democratic principles under the rule of law as the basis of the authority of government on a global scale.³⁸

Because the sovereign equality of nations principle mandates that “no [nation] can be bound without or against its will,” the imposition of democratic policies to govern the political practices of non-democratic societies by radically de-stabilizing non-democratic political hegemonies through the use of coercion is not optimal.³⁹ In the alternative, the use of non-coercive mechanisms of cultural diffusion, which are specifically calibrated to avoid direct displacement of pre-existing political hegemonies, would facilitate the diffusion of democratic policies into non-democratic countries in a manner that complies with the principle of the sovereign equality of nations and mitigates conflict with existing hegemonic political leadership.⁴⁰ Further, because of the significant enforcement and monitoring costs associated with effecting policy

37. See Shipan & Volden, *supra* note 8, at 843–44; see also Simmons et al., *supra* note 8, at 799–801.

38. See Shipan & Volden, *supra* note 8, at 841; see also Strang & Meyer, *supra* note 7, at 492.

39. See Kelsen, *supra* note 2, at 212. A distinction must be made between the use of coercion in effectuating the democratization of the political practices of transnational governmental entities and the use of coercion in effectuating the democratization of the political practices of non-democratic sovereign national governments. The use of coercion in effectuating the democratization of the political practices of transnational governmental entities is justifiable as a means to create a universal standard by which nations must abide in international affairs, which is a standard that arguably exceeds the scope of authority of any individual country. In contrast, the use of coercion in effectuating the democratization of the political practices of non-democratic sovereign national governments is arguably less justifiable because the political practices of an individual nation are more firmly within the scope of its sovereign authority.

40. See *id.*

change using coercive mechanisms of cultural diffusion, which are caused by native resistance to the establishment of democratic institutions and the ongoing risk of regression to a priori non-democratic political practices as conflicting political cultural values compete for dominance within a society, policy change through non-coercive mechanisms of diffusion would enable relatively less costly transitions from non-democratic to democratic modes of governance as compared to policy change engendered through coercion.⁴¹

Given that the right to self-determination is a fundamental human right recognized under international law and that universal subordination to the rule of law is a precondition for the conceptual possibility of international law, political systems throughout the world must be harmonized to recognize democratic governance under the rule of law as the source of their political authority.⁴² Democratizing the manner in which power is allocated within transnational governmental organizations would create a new channel for peacefully transmitting democratic culture into non-democratic societies by using non-coercive mechanisms of cultural diffusion to build democratic infrastructure within non-democratic societies in a manner that does not directly conflict with existing political hegemonies.⁴³ Further, since democratic culture would be diffused into such societies in a manner that is non-coercive and is compatible with the sovereign equality of nations principle, democratic institutions so established within non-democratic societies are more likely to be sustainable, with minimized risk of regression to a priori non-democratic political norms and practices and with relatively lower costs attributable to enforcement and monitoring, because of the relatively lower stakes of such elections with regard to the status of the hegemony.⁴⁴ In the long-run, such cultural diffusion would enable the harmonization of political systems throughout the world to adopt democratic principles under the rule of law as the basis for the authority of government, which would strengthen the conceptual framework of international law and propagate the uniform enforcement of the right to self-determination on a global scale.

41. See Simmons et al., *supra* note 8, at 791.

42. See Universal Declaration of Human Rights, *supra* note 1, at 75; see also Nardin, *supra* note 4, at 386.

43. See Shipan & Volden, *supra* note 8, at 841; see also Simmons et al., *supra* note 8, at 795–99.

44. See Simmons et al., *supra* note 8, at 791.

III. HARMONIZATION OF POLITICAL LEGITIMACY TO ADOPT DEMOCRATIC PRINCIPLES AND THE RULE OF LAW AS A PREREQUISITE FOR THE CONCEPTUAL POSSIBILITY OF INTERNATIONAL LAW

At the heart of every political system is an assumption of what constitutes the source of legitimacy upon which a governmental entity relies to exercise rightful authority over the governed, a concept otherwise known as political legitimacy.⁴⁵ Max Weber, an influential sociologist and political economist, theorized that political legitimacy is derived from one of three main sources: traditional authority, charismatic authority and legal authority.⁴⁶ Legitimacy derived from traditional authority is based upon societal customs and practices that are rooted in the history of the society being governed.⁴⁷ An example of political systems that derive legitimacy from tradition are monarchies, which vest the absolute and perpetual power of the state in the persona of specific individuals on the basis of culturally determined lines of succession.⁴⁸ In contrast, political systems that derive legitimacy from charismatic authority are largely reliant upon the character, reputation and personal qualities of their sovereign leader, a person whose importance within a particular society is significant enough that the absolute and perpetual power of the state is vested in the individual persona of such person.⁴⁹ In such political systems, individual political leaders transcend the rule of law in a manner analogous to that of political leaders in systems whose political legitimacy is derived from traditional authority.⁵⁰ An example of political systems that derive legitimacy from charismatic authority are dictatorships, which vest the absolute and perpetual power of the state in the persona of specific individuals on the basis of personal power. Lastly, political systems that derive legitimacy from legal authority are based upon institutional law and procedure, wherein institutions founded upon and subordinate to the rule of law govern as agents of the public.⁵¹ In such political systems, the absolute and perpetual power of the state is not vested in the persona of any one individual, but rather, is vested in the rule of law itself.⁵² All three forms of political legitimacy are employed in varying degrees and combinations to legitimize the authority of political systems across the world.⁵³ However, the fragmentation in how

45. See Weber, *supra* note 19, at 1–11 (providing a theoretical framework outlining the different forms and sources of political legitimacy).

46. See *id.*

47. See *id.*; see also Kelsen, *supra* note 2, at 212.

48. See Weber, *supra* note 19, at 1–11.

49. See *id.*

50. See *id.*

51. See *id.*

52. See *id.*

53. See also U.S. Central Intelligence Agency World Factbook, available at <https://www.cia.gov/library/publications/the-world-factbook/>.

different political systems conceive of legitimacy is a source of friction between societies that employ incongruent political systems because each such political system is the manifestation of a set of cultural values and assumptions that may be incompatible with the values and assumptions that form the basis of political authority in other political systems.⁵⁴

The fragmentation in how different political systems conceive of legitimacy is significant because a fundamental condition necessary for the conceptual possibility of international law is the universal subordination of all persons, including political leaders, to the rule of law.⁵⁵ Treaties, which serve as the foundation of positive international law, form the basis of agreement between countries as to the resolution of their disputes and are designed to create law that bind ratifying countries with the goal of modifying nations' practices in pre-determined ways.⁵⁶ However, since political systems rooted purely in charismatic and traditional authority vest the absolute and perpetual power of the state in the persona of their sovereign leaders, such sovereign leaders are not subject to domestic judicial process arising from the violation of international law because of sovereign immunity. Within their political domains, the conduct of such sovereign leaders cannot be restricted because their inherent sovereign authority transcends the rule of law.⁵⁷

Further, such sovereign leaders are also arguably not subject to legal recourse outside of their political domains because of the sovereign equality of nations principle. Because no country can be bound without or against its will and the absolute and perpetual power of the state in non-democratic countries is vested in the persona of their sovereign leaders, legal enforcement of international law against such sovereign leaders is not ordinarily permitted without their consent.⁵⁸ In contrast, since political systems whose political legitimacy is based on legal authority vest the absolute and perpetual power of the state in the rule of law, and not in the individual persona of its political leaders, political leaders within such countries would be subject to domestic legal

cia.gov/library/publications/resources/the-world-factbook/fields/2128.html (containing a listing of the basic forms of government in all countries in the world). In assessing the different forms of how political legitimacy is valued in political systems throughout in the world, the source of political authority of a particular country may be functionally different than its nominal characterization. For example, as characterized by the U.S. Central Intelligence Agency, the nation of Belarus deems itself a republic in name, but, in fact, operates functionally as a dictatorship. Further, the manner in which political legitimacy manifests itself in a particular country may not be purely rooted in a single archetype and, as a result, the political systems of such countries may exhibit characteristics of more than one archetype.

54. *See id.*

55. *See* Nardin, *supra* note 4, at 386.

56. *See* Hathaway, *supra* note 3, at 1940–41.

57. *See* Kelsen, *supra* note 2, at 212.

58. *See id.* at 209.

sanctions, such as impeachment, from the violation of duly authorized treaties, which assume the force of law, because such political leaders are subordinate to the rule of law and are obligated to uphold the law as a condition of their occupation of office.⁵⁹ Whether political leaders of countries whose political legitimacy is based on legal authority would be subject to legal recourse outside of their political domains for violations of international law is unclear and depends on whether such countries have consented to, by treaty or otherwise, adjudication by an extra-national tribunal.⁶⁰

The current state of incongruence between democratic and non-democratic political systems renders international law as illusory because the universal subordination to the rule of law, which is a prerequisite for the conceptual possibility of international law, is non-existent.⁶¹ The differences in the manner in which sovereign authority is vested permits leaders of political systems whose legitimacy is derived from traditional and/or charismatic authority with the sovereign power to violate international law, without legal recourse, in a manner that is impermissible for leaders in political systems whose political legitimacy is derived purely from legal authority.⁶² Further, because the sovereign

59. See U.S. CONST. art. VI, cl. 2 (the “Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land.”); see also U.S. CONST. art. VI, cl. 3 (“[A]ll executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution.”). While countries whose political legitimacy is rooted in legal authority may not universally abide by the same constitutional language regarding the treatment of treaties as *pari passu* with domestic law and the obligation for governmental officers to uphold the law as a condition of office, the U.S. Constitution is used herein as a model to exemplify the subordination of political leaders to the rule of law, which includes subordination to international law as it manifests in duly authorized treaties. See *United States v. Nixon*, 418 U.S. 683, 706 (1974) (“[N]either the doctrine of separation of powers nor the generalized need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances.”); see also Courtenay R. Conrad & Emily Hencken Ritter, *Treaties, Tenure, and Torture: The Conflicting Domestic Effects of International Law*, 75 J.L. & POL. 397, 398 (2013) (in support of the proposition that the most effective mechanism of enforcement of treaties against sovereign national governments, specifically human rights treaties, is by means of litigation in their domestic courts, it is noted that “[e]ffective domestic courts constrain state repression (citation omitted) and courts are enabled and emboldened to sanction violators . . .”). While countries whose political legitimacy is rooted in legal authority may not universally contain the same constitutional provisions constraining the grant of sovereign authority to its political leaders, the decisions of the U.S. Supreme Court are used herein as a model to exemplify the subordination of political leaders to the rule of law and the absence of an absolute, unqualified immunity for political leaders from judicial process.

60. See Kelsen, *supra* note 2, at 213.

61. See Nardin, *supra* note 4, at 395; see also Kelsen, *supra* note 2, at 212–13 (arguing that in reality what is created through the international organization is a sham government).

62. See Nardin, *supra* note 4, at 395; see also Kelsen, *supra* note 2, at 212.

equality of nations principle gives rise to the presumption of supremacy of the sole right of sovereign national governments to enforce law within their own political domains, extra-national enforcement of international law against sovereign leaders is not legal with regard to those certain countries where political leaders are not subordinate to the rule of law (notwithstanding the legal validity of the use of extra-national coercion in the form of military force or economic sanction).⁶³ Therefore, harmonizing the manner in which political legitimacy is valued among all political systems in the world as a means to accomplish the global recognition of the primacy of the rule of law, rooted in democratic principles, as the basis for the legitimacy of government is a prerequisite for achieving a lasting state of peace between nations; the conceptual possibility of international law requires, at minimum, universal subordination by all people, including political leaders, to the rule of law.⁶⁴

IV. THE CASE FOR THE DEMOCRATIZATION OF THE UNITED NATIONS

The United Nations is an international governmental organization committed to maintaining international peace and security, developing friendly relations among nations and promoting social progress, better living standards and human rights.⁶⁵ Historically, the United Nations has taken action on a wide range of issues, and provides a forum for its member states to express their views and harmonize their actions, through the General Assembly, the Security Council, the Economic and Social Council and other bodies and committees.⁶⁶ Specifically, the mission of the United Nations is to keep peace throughout the world, develop friendly relations among nations, help nations work together to improve the lives of poor people, conquer hunger, disease and illiteracy and to encourage respect for each individual's rights and freedoms.⁶⁷

Democratizing the manner in which leadership positions within the United Nations are allocated would create new channels for the diffusion of democratic culture into non-democratic societies.⁶⁸ Using the non-

63. See Kelsen, *supra* note 2, at 209.

64. See Nardin, *supra* note 4, at 395.

65. See U.N. BRIEFING PAPERS, *supra* note 26, at 5–6.

66. *Id.*

67. *Id.*

68. See Shipan & Volden, *supra* note 8, at 842–43; see also Simmons et al., *supra* note 8, at 799–801. The idea of democratizing the manner in which power is allocated within the United Nations is a fluid concept because of the broad spectrum of variation in which the concept could manifest. For example, a proposal for the creation of a U.N. Parliamentary Assembly, comprised of representatives directly elected by people across the world, is a variation that would allow for the limited democratization of the United Nations through the election of members of a specially

coercive mechanisms of cultural diffusion, the ritual practice of periodically staging elections to allocate political power within the United Nations would serve as a logistical model from which democratic political practices and related institutional infrastructure could be established to govern in non-democratic societies.⁶⁹ In the long-run, the diffusion of democratic culture into non-democratic societies using non-coercive mechanisms of cultural diffusion would facilitate a harmonization of political systems to institutionalize democratic political practices and adopt democratic principles under the rule of law as the basis of the authority of government.⁷⁰ Because the individual right to self-determination is a fundamental human right firmly established under international law and the Universal Declaration of Human Rights, the proposal set forth herein to periodically stage transnational elections to allocate political power within the United Nations for the purpose of facilitating the diffusion of democratic culture into non-democratic countries is supported by a strong mandate and would operate to significantly advance the mission of the United Nations and improve the lives of people all over the world.⁷¹

The democratization of the United Nations would catalyze the harmonization of global political systems to adopt democratic principles under the rule of law as the basis of the authority of government by utilizing the mechanics of cultural diffusion to install democratic institutional infrastructure in non-democratic countries and to expose such non-democratic societies to the rituals of democratic political practice.⁷² The harmonization of the current state of incongruence between democratic and non-democratic political systems is imperative

designated parliamentary body which does not affect other leadership positions in the United Nations, such as the Secretary-General or members of the Security Council. *See* McCarthy, *supra* note 10, at 34. Another variation would expand the concept of democratizing the United Nations to also hold transnational elections for the office of Secretary-General, who would serve as the popularly elected “spokesman” for the world. While the exact contours of how the democratization of the United Nations would manifest is ultimately the province of diplomacy, the key insight is that the ritual practice of periodically staging democratic elections in non-democratic countries would: (1) expose members of non-democratic societies to democratic culture and the rule of law in a manner and to an extent that is not possible when exposure is limited only to non-democratic political practices; and (2) install the infrastructure of democratic political institutions in non-democratic countries in a manner and to an extent that is not possible under the current configuration of their political systems.

69. *See* Shipan & Volden, *supra* note 8, at 842–43; *see also* Simmons et al., *supra* note 8, at 799–801.

70. *See* Strang & Meyer, *supra* note 7, at 492.

71. *See* Universal Declaration of Human Rights, *supra* note 1, at 75; *see also* U.N. BRIEFING PAPERS, *supra* note 26 (the mission of the United Nations is to “encourage respect for each individual’s rights and freedoms,” which includes the right to self-determination).

72. *See* Strang & Meyer, *supra* note 7, at 492; *see also* Shipan & Volden, *supra* note 8, at 842–43; Simmons et al., *supra* note 8, at 799–801.

because universal subordination to the rule of law is a precondition for the conceptual possibility of international law.⁷³ Because countries that derive political legitimacy from traditional and/or charismatic political authority vest the absolute and perpetual power of the state in the persona of their political leaders, agreements under international law involving such countries are illusory since their political leaders are immune from both domestic judicial process, because of sovereign immunity, and from legal recourse outside of their political domains, because of the sovereign equality of nations principle.⁷⁴ Therefore, the harmonization of global political systems to adopt democratic principles under the rule of law as the universal basis of the authority of government, as catalyzed by the democratization of the United Nations, is a prerequisite to achieving a lasting peace between nations because the conceptual possibility of international law, at minimum, is predicated upon universal subordination by all people, including political leaders, to the rule of law.⁷⁵

In addition to the ideological effects of democratizing the manner in which leadership positions within the United Nations are allocated, the institutionalization of the rituals of democratic political practices to stage transnational elections would also have significant pragmatic effects upon global resource distribution, methods of global data collection, access to political opportunity, the quality of the marketplace of ideas, the strength of global culture and the relevance of the United Nations in the global milieu. From a practical perspective, the democratization of the United Nations would require the establishment of democratic institutional infrastructure in order to stage transnational elections. The democratic election process is composed of five primary segments: voter registration; candidate nomination; campaigning; voting; and vote tabulation. The infrastructure that would need to be built in order to carry out the rituals contemplated by each of these segments could be leveraged to positively impact the mission of the United Nations and improve the lives of people around the world.

The voter registration process is essentially a process of data collection, similar to a census, by which each potential voter provides demographic information and other data in order to be identified as a qualified voter. The content of the data requested for registration purposes could be specifically tailored to obtain information that would otherwise be left unknown. Once registered, each voter is deemed eligible to participate in the election and their demographic information is recorded in a central log. In addition to its purpose as a means for

73. See Nardin, *supra* note 4, at 386, 395.

74. See Kelsen, *supra* note 2, at 212; see also Weber, *supra* note 19, at 1–11.

75. See Nardin, *supra* note 4, at 386, 395.

organizing voting rolls, the collection of such demographic data would enhance the quality of global data sets and could be useful in social scientific studies and in calculating resource allocation for humanitarian endeavors.

The candidate nomination process would provide individuals who may not have access to political power within their political system a means to assume a political leadership position. Given the lack of opportunities to assume leadership positions in non-democratic countries because of the relatively fixed and unequal nature of how political power is allocated in such countries, the candidate nomination process for leadership posts within the United Nations would create new opportunities for potential political leaders to assume office. Thus, democratizing the United Nations would improve the quality of political leadership, in the aggregate, because the pool of candidates eligible to assume political power would be deeper relative to the status quo.

The campaigning process would provide a means by which candidates from different societies can communicate their ideas, beliefs and values in places where such ideas and beliefs may not otherwise be expressed. Candidates for leadership positions in the United Nations would serve as conduits through which different cultural values and beliefs are disseminated across the world. Given the restrictions placed upon the free expression of ideas in certain countries throughout the world, the campaigning process would create a channel by which new cultural values and beliefs could be introduced into such countries without censorship.

The voting process, a ritual which generally requires the establishment of precincts where ballots are cast, would create centers of resource and information distribution at which, in addition to providing a venue for voting, humanitarian aid could be provided directly to people around the world in a highly efficient manner. Using data gathered during the voter registration process to organize the allocation of humanitarian aid, the establishment of voting precincts and the staging of elections would provide an effective distribution network to deliver humanitarian aid on an unprecedented scale. Food, medicine, education and other forms of humanitarian aid could be distributed in order to improve the lives of poor people, conquer hunger, disease and illiteracy and to encourage respect for each individual's rights and freedoms, all goals at the core of the mission of the United Nations.

The vote tabulation process, and media coverage thereof, would create moments of global cultural unity, similar to the Olympics, in which the competitive spectacle of deciding global elections is likely to attract interest from people across the world. Global elections would provide novel media content to be transmitted to a worldwide audience through mass communications technology, which would increase the visibility of

the United Nations and enhance its relevance in the global milieu. Increased interest in the United Nations engendered because of the spectacle of the transnational democratic process would give the organization more credibility as a political actor contributing to the course of international events and, consequently, would give the people of the world, through their suffrage, a larger stake in how global political outcomes are determined.

V. CONCLUSION

The state of incongruence between democratic and non-democratic countries poses a continuing threat to the achievement of perpetual peace between nations because international law, which forms the basis of agreement between countries as to the resolution of disputes, is illusory for as long as universal subordination by all people, including political leaders, to the rule of law is non-existent.⁷⁶ Political systems whose political legitimacy is derived from legal authority view law itself as the basis of a relationship among moral equals.⁷⁷ The function of law in such political systems whose political authority is derived from the rule of law is to uphold democratic principles and make effective those certain policies supported by the public as expressed through elections.

Ideally, the function of law in such societies is not merely to operate as a contrivance designed solely to serve as an instrument of the purposes of political leaders.⁷⁸ In contrast, political systems in which political leaders are individually vested with sovereign authority deem such leaders to be legally and morally superior in their relations with all other people and empower such leaders to use law, in their sole discretion, as an instrument for their own purposes with no legal accountability.⁷⁹ In the long-run, the harmonization of global political systems to adopt democratic principles and the rule of law as the basis for government, as catalyzed by the democratization of the United Nations, would homogenize the status of all of the people of the world so that each and every person is governed as a legal and moral equal.⁸⁰

Harmonization in this manner would enable the satisfaction of the

76. See Hathaway, *supra* note 3, at 1940–41; see also Nardin, *supra* note 4, at 386, 395; Kelsen, *supra* note 2, at 212; Weber, *supra* note 19, at 1–11.

77. See Nardin, *supra* note 4, at 395; see also Kelsen, *supra* note 2, at 212; Weber, *supra* note 19, at 1–11.

78. See Nardin, *supra* note 4, at 395; see also Kelsen, *supra* note 2, at 212; Weber, *supra* note 19, at 1–11.

79. See Nardin, *supra* note 4, at 395; see also Kelsen, *supra* note 2, at 212; Weber, *supra* note 19, at 1–11.

80. See Nardin, *supra* note 4, at 395; see also Kelsen, *supra* note 2, at 212; Weber, *supra* note 19, at 1–11.

prerequisites of the conceptual possibility of international law and, because international law forms the basis of agreement between countries as to the resolution of disputes, would strengthen the foundation for the achievement of world peace by fortifying the efficacy, enforceability, and framework of international law.⁸¹

The democratization of the United Nations would not be a panacea because diplomacy between nations would remain as the driving force for maintaining peace.⁸² However, despite the probable diplomatic difficulty in effectuating the achievement of a truly global democracy, democratizing the United Nations to hold periodic transnational elections in non-democratic countries would, in the long-run, leverage the mechanisms of cultural diffusion to effect the harmonization of such non-democratic countries to adopt democracy and the rule of law as the basis of the authority of government. As President Woodrow Wilson declared in an address to the U.S. Congress, “we shall fight for the things which we have always carried nearest our hearts—for democracy, for the right of those who submit to authority to have a voice in their own governments, for the rights and liberties of small nations, for a universal dominion of right by such a concert of free peoples as shall bring peace and safety to all nations and make the world itself at last free.”⁸³ The democratization of the United Nations, by creating new channels of cultural diffusion to facilitate the universal subordination to the rule of law and uphold the integrity of the conceptual possibility of international law, would be a seminal achievement in the historic endeavor to “make the world itself at last free.”

81. See Shipan & Volden, *supra* note 8, at 842–43; see also Simmons et al., *supra* note 8, at 799–801; Strauss, *supra* note 9, at 388; Nardin, *supra* note 4, at 395; Kelsen, *supra* note 2, at 212; Weber, *supra* note 19, at 1–11. With regard to the practical considerations of effectuating the democratization of the United Nations, it is probable that diplomacy involving a portfolio of incentives and sanctions would be a necessary element in obtaining agreement from sovereign countries to consent to the staging of transnational democratic elections within their political realms. Because the outcomes of such transnational elections would not directly impact the personal stake that sovereign political leaders have within their own national governments, the success of such “carrots and sticks” diplomacy would be possible if the portfolio of incentives and sanctions is fruitful enough to override concerns regarding the threat of instability to existing political hegemonies. See Hathaway, *supra* note 3, at 1940–41; see also Nardin, *supra* note 4, at 386, 395; Kelsen, *supra* note 2, at 212; Weber, *supra* note 19, at 1–11.

82. See Kelsen, *supra* note 2, at 212. Because of the sovereign equality of nations principle, national governments would still maintain supremacy over their own diplomatic affairs even if the United Nations were democratized.

83. Woodrow Wilson, *War Messages*, 65th Cong., 1st Sess. Senate Doc. No. 5, Serial No. 7264, Washington, D.C., 1917, at 3–8.